IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2097 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHOR MOHANDAS PANJABI
Versus
IQBALBHAI MOHMEDBHAI PATEL & ANR.

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Appearance :
MR HM PARIKH for Appellant
NOTICE SERVED for Respondent No.1
MS SHRADDHA TRIVEDI for Respondent No.1
MR YOGESH S LAKHANI for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 17/01/2007

ORAL JUDGMENT

[1] The appellant is the original claimant. In this appeal, the appellant has challenged the findings given by the Motor Accident Claims Tribunal (Auxiliary), Kheda at Nadiad vide judgment dated 9th January, 1992 in Motor Accident Claims Petition No.874/84 holding the appellant guilty of contributory negligence to the extent of 50% and thereby deducting a sum of Rs.28,890/- from the compensation, which is assessed at Rs.57,780/-.

[1.1] The appellant filed Motor Accident Claims Petition No.874/1984 against the respondents, original opponents for claiming compensation of Rs.67,650/- for the damage caused to his property namely Truck bearing Registration No.GTY-6184. According to him, on account of rash and

negligent driving of respondent No.1, on 3rd August, 1983 at about 12.30 in the afternoon on National Highway No.8, the accident occurred and his truck got badly damaged. Respondent No.1 at that time drove the S.T. Bus belonging to respondent No.1 bearing Registration No.GRR-8912. He further averred that because of the damage caused to the truck, it remained idle for repairing for almost 44 days causing further loss of income at the rate of Rs.350/- per day. Thus, in all, he claimed a sum of Rs.67,650/-.

[1.2] Respondent No.2 resisted the claim by filing written statement at Ex.10. It denied all the averments made by the appellant in the petition. It was contended therein that there was no negligence on the part of respondent No.1, but on the contrary, the appellant at the relevant time, drove the vehicle in excessive speed and in rash and negligent manner causing the accident. Before the Tribunal, the parties led oral evidence as well as documentary evidence. On the

strength of material produced before the Tribunal, it assessed the compensation, which could be payable to the appellant, at Rs.57,780/- However, the Tribunal found the appellant guilty of contributory negligence to the extent of 50% and, therefore, it deducted a sum of Rs.28,890/- and awarded the same amount i.e. Rs.28,890/- by way of compensation to the appellant. Hence, this appeal.

[2] Mr.H.M.Parikh, learned advocate appearing for the appellant has assailed this finding by submitting that the Tribunal has committed an error in holding the appellant guilty of negligence to the extent of 50% of the accident. He has submitted that the material produced on record including the oral as well as documentary evidence and panchnama of the seen of occurrence, clearly established that it was respondent No.2, who was rash and negligent and accident was caused by him. He has submitted that the Tribunal has committed an error in deducting 50% of the

amount of compensation without any justifying reason. He has also submitted that the present appeal is required to be allowed.

[3] As against that Mr.Dave, learned advocate appearing for respondent No.2 has supported the findings given by the Tribunal. He has submitted that it was the appellant, who was rash and negligent in driving his vehicle, which ultimately collided against the S.T. Bus of respondent No.2. He has submitted that the appellant did not hold any valid licence and, therefore, it could safely be presumed that he did not know how to drive. He has, therefore, prayed that the appeal be dismissed. Lastly, he has submitted that respondent No.1, who was prosecuted for rash and negligent driving in a Criminal Court, was acquitted.

[4] Having considered the submissions of the learned advocates appearing for the parties and having gone through the record and proceedings of

the case, it appears that on the date of accident, the truck was proceedings from Ahmedabad to Baroda and S.T. Bus was travelling from Jammusar to Ambaji. The accident occurred on over-bridge near village : Bhumel. As a result of the collision, the drivers of both the vehicles as well as passengers of S.T.Bus received injuries, the property of the appellant namely truck was also got badly damaged. The sole question to be decided here is whether the damage was caused on account of negligence of both the drivers or either of them. So far as the truck is concerned, the Tribunal has in its findings considered that both the drivers were equally responsible for the accident. The Tribunal also found that even if there was mechanical brake failure so far as the bus was concerned, only 50% negligence could be attributed to respondent No.1. I am unable to understand that on what basis the Tribunal has given such finding. The evidence clearly shows that the truck was on its correct side. In the panchnama, the position of the vehicles has been adequately described. It

shows that S.T. Bus had gone totally on its wrong side and had collided with the truck and, thereafter, part of it had landed in the drainage, running parallel to the road near the place of accident. The road is running East-West as per the description in the panchnama. Thereafter, on completion of curve, it again runs North-South. The description in the panchnama therefore, adequately spells out that the truck was very much on its correct side when the collision took place. After causing excessive damage to the truck, the bus went off the road and landed in the drainage. This is nothing but utter carelessness on the part of the driver of the S. T. Bus, namely respondent No.1. The Tribunal has given reasoning that there was possibility of braek failure and, therefore, the appellant was negligent to the extent of 50%, cannot be accepted. Unless the bus was driven at high speed, its driver could have exercised control over it and it could not have collided with the truck. I do not see any fault of the appellant. The entire fault is of respondent

No.1. Therefore, the finding given by the Tribunal is perverse, erroneous and it is required to be quashed and set aside. I hold that it was respondent No.1, who was 100% negligent and the accident occurred only due to his negligent driving. The appellant is entitled to receive the entire amount of compensation assessed by the Tribunal i.e. Rs.57,780/-.

[5] In view of the aforesaid facts and circumstances, the appeal is allowed. The respondents are directed to deposit the balance amount with the Tribunal within six months from the date of this judgment together with the interest at the rate of 12% p.a. on the balance amount i.e. Rs.28,890/- from the date of application till realization with proportionate costs. Upon deposit of the said amount, the Tribunal is directed to hand over the balance amount together with the interest and costs amount by Account Payee cheque to the appellant after proper verification.

[**AKSHAY H.MEHTA,J.**]

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